

Special Civil Application No 506 of 1988

Date of decision: 02/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Prabhudas P. Bagaria

vs

Competent Authority & Dy. Collector (ULC), Rajkot & Anr.

Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioner

Shri D.N. Patel, Asst. Govt. Pleader, for the Respondents

Coram : MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 12th December 1983 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the common appellate order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 20th October 1987 inter alia in Appeal No. 417 of 1984 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the family of the petitioner to be in excess of the ceiling limit by 47117.02 square meters.

2. The facts giving rise to this petition move in a narrow compass. It appears that the petitioner is son of one Pancahand

Andarji (the deceased for convenience). He breathed his last on 24th February 1964 leaving behind him the petitioner and his brothers and their mother as his heirs and legal representatives. On coming into force of the Act, the petitioner and other co-owners of the properties left behind by the deceased filed their declarations in the prescribed form under sec. 6(1) of the Act. These forms were duly processed by respondent No.1. After observing necessary formalities according to law, by his order passed on 12th December 1983 under sec. 8(4) of the Act, the holding of the petitioner was declared surplus by 47117.02 gms. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-417 of 1984. It was heard along with Appeal No. Rajkot-321 of 1984. By his common appellate order passed on 20th October 1987 in the aforesaid appeals, respondent No.2 dismissed both the appeals. Its copy is at Annexure B to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 227 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition.

3. It may be stated that the holding of the family was treated in the holding of the petitioner on the ground that all co-owners were treated as an association of persons for the purposes of the Act. That conclusion reached by both the authorities below runs counter to the Division Bench ruling of this Court in the case of Chhaganlal Trikamdas Thakker and Others v. Competent Authority, Rajkot and Others reported in 1994(1) Gujarat Current Decisions at page 1. It has been held therein that co-owners of a property or properties are not an association of persons for the purposes of the Act.

4. Even otherwise, the relevant provisions contained in the Hindu Succession Act, 1956 provides for co-ownership of a property or properties in the hands of heirs and legal representatives of a person dying intestate. It is specifically provided in sec. 19 thereof that heirs would take properties as tenants-in-common and not as joint tenants. In that view of the matter, both the lower authorities were not right in treating co-owners of the properties left behind by the predecessor-in-title of the present petitioner to be belonging to an association of persons.

5. It transpires from the material on record that the properties declared by the co-owners included constructed properties and parcels of agricultural land. Constructed properties if found in existence prior to coming into force of the Act will have to be excluded in view of the binding ruling

of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 Supreme Court 1567. Agricultural lands used as such on the date of coming into force of the Act if not shown in any zone other than agricultural zone in the master plan answering its definition contained in sec. 2(h) of the Act will also have to be excluded from the holding of the land-holders in view of the binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum v. State of U.P. and others reported in AIR 1993 Supreme Court 2465. The attention of the authorities below is not focussed on these two aspects as well.

6. In view of my aforesaid discussion, I am of the opinion that the impugned orders at Annexures A and B to this petition cannot be sustained in law. They have to be quashed and set aside. The matter will have to be remanded to respondent No.1 for restoration of all the proceedings to file including separate declarations made by the co-owners and for his fresh decision according to law in the light of this judgment of mine.

7. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 12th December 1983 at Annexure A to this petition as affirmed in appeal by the common appellate order passed by the Urban Land Tribunal at Ahmedabad inter alia in Appeal No. Rajkot-417 of 1984 at Annexure B to this petition is quashed and set aside. The matter is remanded to respondent No.1 for restoration of all the proceedings to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
